

DIVISION I

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOSEPHINE LINKER HART, Judge

CACR06-840

February 21, 2007

MAXLEY DAMEN PARKER  
APPELLANT

APPEAL FROM THE DREW COUNTY  
CIRCUIT COURT  
[NO. CR-03-260-1]

V.

HONORABLE SAMUEL B. POPE,  
CIRCUIT JUDGE

STATE OF ARKANSAS  
APPELLEE

AFFIRMED

On July 6, 2004, appellant, Maxley Damen Parker, pleaded guilty to the crimes of residential burglary, criminal use of a prohibited weapon, and possession of a firearm, for which the circuit court placed him on probation for six years. On January 5, 2006, the State filed a petition to revoke appellant's probation, and following a revocation hearing, the court revoked appellant's probation and sentenced him to ten years' imprisonment. On appeal, appellant argues that he was denied due process because the probation revocation was based on probation violations not set forth in the petition to revoke. We affirm.

The revocation petition alleged, among other grounds, that appellant violated his probation by committing a criminal offense punishable by confinement and failing to report any arrest to his probation officer, failing to report a change of address, consuming a controlled substance, and failing to complete a drug-rehabilitation program. At the hearing

on the petition, appellant's probation officer testified that appellant failed to report a change of address; that he admitted to using or tested positive for marijuana on five occasions, including three occasions that occurred before the filing of the petition and two that occurred after the filing of the petition; that he failed to complete a drug-rehabilitation program; and that he was arrested on February 16, 2006, for disorderly conduct and arrested on April 17, 2006, for possession of a controlled substance, carrying a weapon, and public intoxication. Appellant did not object to the probation officer's testimony.

The State also presented the testimony of Steven Stain, a patrol sergeant with the Monticello Police Department. The State asked Stain about his contact with appellant on March 31, 2006, and appellant's counsel objected, arguing that "if there's anything not in that petition, I'm going to object to it, because obviously we're not prepared to respond to that." Counsel for the State responded that he thought this was in the revocation petition dated January 5, 2006. The court observed that the offenses occurred after the petition was filed. The probation officer intervened and stated that there had been an amended petition filed, and counsel for appellant stated that he had received an amended petition by fax. The probation officer then stated that Stain would testify regarding an incident that occurred before the incident mentioned in the petition. The court allowed the testimony, and Stain described an event involving appellant in which appellant was at a residence under the influence of alcohol. Counsel for appellant again objected because the information was not in the petition to revoke. The court allowed it, stating that appellant was aware of the

conduct.

Stain then testified regarding an incident that occurred at a bar in which appellant possessed marijuana, carried a knife, and was under the influence of alcohol. Counsel for appellant objected, arguing that “unless there’s a proper foundation laid as to when this occurred and what, whether or not it’s part of the petition.” Counsel for the State stated that he believed that the petition had been amended. The court overruled appellant’s objection. Appellant asked if “we could get a date or something.” The court replied, “Yeah. I agree with you on that. And I assume that the State is going to clear that up.” Stain then testified that the incident took place on April 17, 2006. There was no further objection.

At the conclusion of the hearing, the court revoked appellant’s probation. The court found that appellant had violated the conditions of his probation by committing another offense, possessing a weapon, entering a place where alcohol was sold, using alcohol, failing to notify his probation officer of a change of residence, continuing to use controlled substances on several occasions, and failing to attend drug treatment.

On appeal, appellant asserts that he was denied due process because the circuit court permitted evidence of probation violations not listed in the revocation petition, including committing another criminal offense, possessing a knife, and entering a place where alcoholic beverages were sold. He asserts that the court revoked his probation primarily because of the new criminal violations and allegations related to the incident that took place at the bar. He further asserts that the other violations of his probation were “technical in

nature,” and were it not for the criminal violations, the court might not have imposed a ten-year sentence.

We note that Ark. Code Ann. § 5-4-310(a)(3)(C) and (b)(3)(C) (Repl. 2006), require that a defendant must be given prior written notice of the condition of probation allegedly violated. Further, we have held that it is fundamentally unfair to revoke probation on the basis of violations not mentioned in the revocation petition, because a defendant cannot properly prepare for the hearing without knowing in advance what charges of misconduct are to be investigated as a basis for the proposed revocation of the probation. *Hill v. State*, 65 Ark. App. 131, 985 S.W.2d 342 (1999). While the revocation petition in this case does state that appellant violated the condition of his probation prohibiting him from committing criminal offenses, the petition was filed well before the conduct described by Stain, and there is no other petition in the record. Were these the only grounds for revocation, we would reverse.

The State, however, had to prove only one violation to establish that appellant violated his probation. *See, e.g., Brock v. State*, 70 Ark. App. 107, 14 S.W.3d 908 (2000). Appellant does not challenge the court’s findings that he also violated his probation by using marijuana, failing to complete drug rehabilitation, and failing to report a change of address. Because appellant does not challenge these separate, alternative grounds for revoking his probation, we uphold the court’s decision. While appellant asserts that these grounds were “technical in nature,” we reject his suggestion that these violations were de minimis and would have

drawn only a light sentence. We observe that any of these grounds was alone sufficient to support revocation. As noted by the circuit court, the history of appellant's "probation supervision shows that he has done many things to avoid being supervised appropriately and in such a manner as this court would expect of someone on supervised probation." The court observed that appellant did not keep "his probation officer notified of where he lives so that he could be properly supervised or home visits could be made," that appellant "continued to use controlled substances on several occasions," and that he "failed to attend drug treatment." Accordingly, we affirm.

Affirmed.

MARSHALL and HEFFLEY, JJ., agree.